

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:16-cv-01981-KBJ

FREEDOM WATCH, INC. v. FOOD AND DRUG
ADMINISTRATION

Assigned to: Judge Ketanji Brown Jackson

Cause: 05:552 Freedom of Information Act

Date Filed: 10/05/2016

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: Federal Question

Plaintiff

FREEDOM WATCH, INC.

represented by **Larry E. Klayman**
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V.

Defendant

**FOOD AND DRUG
ADMINISTRATION**

represented by **Brian J. Field**
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Date Filed	#	Docket Text
10/05/2016	<u>1</u>	COMPLAINT against FOOD AND DRUG ADMINISTRATION (Filing fee \$ 400 receipt number 0090-4699750) filed by FREEDOM WATCH, INC.. (Attachments: # <u>1</u> Summons, # <u>2</u> Civil Cover Sheet)(Klayman, Larry) (Entered: 10/05/2016)
10/05/2016		Case Assigned to Judge Ketanji Brown Jackson. (sth) (Entered: 10/06/2016)
10/06/2016	<u>2</u>	SUMMONS (1) Issued Electronically as to FOOD AND DRUG ADMINISTRATION. (Attachments: # <u>1</u> Summons)(sth) (Entered: 10/06/2016)
11/09/2016	<u>3</u>	GENERAL ORDER AND GUIDELINES FOR CIVIL CASES BEFORE JUDGE KETANJI BROWN JACKSON. The Court will hold the parties and counsel responsible for following these directives, and parties and counsel should pay particular attention to the Courts instructions for briefing motions. Failure to adhere to this Order may, when appropriate, result the imposition of sanctions and/or sua sponte denial of non-conforming motions. Signed by Judge Ketanji Brown Jackson on 11/9/2016. (lckbj1) (Entered: 11/09/2016)
12/19/2016	<u>4</u>	REQUEST FOR SUMMONS TO ISSUE <i>U.S. Attorney for District of Columbia</i> filed by FREEDOM WATCH, INC..(Klayman, Larry) (Entered: 12/19/2016)
12/19/2016	<u>5</u>	REQUEST FOR SUMMONS TO ISSUE <i>Attorney General</i> filed by FREEDOM WATCH, INC..(Klayman, Larry) (Entered: 12/19/2016)
12/20/2016	<u>6</u>	SUMMONS (2) Issued Electronically as to U.S. Attorney and U.S. Attorney General (znmw) (Entered: 12/20/2016)

02/08/2017	<u>7</u>	ORDER requiring Plaintiff to provide Court, on or before 2/27/2017, with proof of service on Defendant. See attached Order for details. Signed by Judge Ketanji Brown Jackson on 02/08/2017. (lckbj1) (Entered: 02/08/2017)
02/20/2017	<u>8</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. FOOD AND DRUG ADMINISTRATION served on 2/10/2017 (Klayman, Larry) (Entered: 02/20/2017)
03/13/2017	<u>9</u>	NOTICE of Appearance by Brian J. Field on behalf of All Defendants (Field, Brian) (Entered: 03/13/2017)
03/13/2017	<u>10</u>	ANSWER to Complaint by FOOD AND DRUG ADMINISTRATION.(Field, Brian) (Entered: 03/13/2017)
03/13/2017		MINUTE ORDER. Before the Court in this FOIA case are a complaint and an answer. It is hereby ORDERED that the parties shall promptly confer and file a joint proposed schedule for briefing or disclosure, on or before 3/28/2017. Signed by Judge Ketanji Brown Jackson on 03/13/2017. (lckbj1) (Entered: 03/13/2017)
03/28/2017	<u>11</u>	Joint STATUS REPORT by FOOD AND DRUG ADMINISTRATION. (Field, Brian) (Entered: 03/28/2017)
04/03/2017		MINUTE ORDER. The Court has reviewed the parties' <u>11</u> Joint Status report, and accepts the government's representations that it will process the documents as indicated. In addition, it is this Court's practice in FOIA cases to require the parties to submit periodic status reports in lieu of convening status conferences unless extraordinary circumstances require an in-person meeting. The Court sees no such circumstance in this case at this time. Therefore, Plaintiff's request for a status conference is denied, and the parties' next status report is due on or before 6/2/17. Signed by Judge Ketanji Brown Jackson on 4/3/2017. (lckbj3) (Entered: 04/03/2017)
06/01/2017	<u>12</u>	Joint STATUS REPORT by FOOD AND DRUG ADMINISTRATION. (Field, Brian) (Entered: 06/01/2017)
06/13/2017		MINUTE ORDER. Pending before the Court in this FOIA matter is the parties' <u>12</u> Joint Status Report, in which the FDA represents that it has completed searches in three of four offices for records responsive to Freedom Watch's FOIA request and produced those records, with the exception of six pages that the FDA has referred to other agencies. With respect to the search of records in the fourth office, the FDA represents that its Center for Drug Evaluation and Research ("CDER") has assigned some portions of Freedom Watch's FOIA request to its "Simple Track and Drug Safety Queue," and other portions to its "Complex Track," and that it has completed searching for and producing those records within the Simple Track. However, the FDA represents that it will not begin processing Freedom Watch's request with respect to the search assigned to CDER's Complex Track for approximately 13 months, because there are 366 requests ahead of Freedom Watch's in that queue. In response to this timing estimate, Freedom Watch asks the Court to "order FDA to make full production within 6 months[.]" asserting that the government's response to its FOIA request is a matter of "life and death" for the American public." (Jt. Status Rpt. at 3.) The record reveals that Freedom Watch requested expedited processing of its FOIA request (see Ex. A to Compl., ECF No. 1 at 7), but the parties' submissions to date do not address the FDA's decision regarding this request for expedition. Accordingly, it is hereby ORDERED that, on or before June 30, 2017, the FDA shall file a memorandum of no more than 15 pages that (1) addresses the FDA's decision, if any, regarding Freedom Watch's request for expedited treatment, and (2) responds to Freedom Watch's argument that the Court should order the agency to make a full production within 6 months. It is FURTHER ORDERED that Freedom Watch may file a brief of no more than 15 pages in reply to the FDA's memorandum on or before July 14, 2017. Signed by Judge Ketanji Brown Jackson on 06/13/2017. (lckbj1) (Entered: 06/13/2017)
06/30/2017	<u>13</u>	MEMORANDUM by FOOD AND DRUG ADMINISTRATION. (Attachments: # <u>1</u> Exhibit Denial Letter, # <u>2</u> Exhibit Response Letter)(Field, Brian) (Entered: 06/30/2017)
07/14/2017	<u>14</u>	REPLY to FDA's <u>13</u> Response to Court Order filed by FREEDOM WATCH, INC.. (Klayman, Larry) Modified on 7/17/2017 to add docket link (jf). (Entered: 07/14/2017)

07/24/2017	<u>15</u>	ORDER requiring Defendant to begin processing the remaining portion of Plaintiff's FOIA request by at least July 1, 2018, and requiring a status report on October 1, 2017, and continuing every 60 days thereafter, until further order of the Court. See attached document for details. Signed by Judge Ketanji Brown Jackson on 7/24/2017. (lckbj3) (Entered: 07/24/2017)
07/25/2017		Set/Reset Deadlines: Status Report due by 10/1/2017. (gdf) (Entered: 07/25/2017)
09/29/2017	<u>16</u>	STATUS REPORT by FOOD AND DRUG ADMINISTRATION. (Field, Brian) (Entered: 09/29/2017)
11/28/2017	<u>17</u>	STATUS REPORT by FOOD AND DRUG ADMINISTRATION. (Field, Brian) (Entered: 11/28/2017)
01/19/2018	<u>18</u>	STATUS REPORT by FOOD AND DRUG ADMINISTRATION. (Field, Brian) (Entered: 01/19/2018)
03/20/2018	<u>19</u>	STATUS REPORT by FOOD AND DRUG ADMINISTRATION. (Field, Brian) (Entered: 03/20/2018)
05/16/2018	<u>20</u>	STATUS REPORT by FOOD AND DRUG ADMINISTRATION. (Field, Brian) (Entered: 05/16/2018)
07/20/2018	<u>21</u>	STATUS REPORT by FOOD AND DRUG ADMINISTRATION. (Field, Brian) (Entered: 07/20/2018)
09/18/2018	<u>22</u>	STATUS REPORT by FOOD AND DRUG ADMINISTRATION. (Attachments: # <u>1</u> Text of Proposed Order)(Field, Brian) (Entered: 09/18/2018)
09/21/2018	<u>23</u>	SUPERSEDING GENERAL ORDER AND GUIDELINES FOR FOIA CASES ASSIGNED TO JUDGE KETANJI BROWN JACKSON. This Order supersedes this Courts prior <u>3</u> General Order and Guidelines for Civil Cases. The Court will hold the parties and counsel responsible for following these amended directives, and parties and counsel should pay particular attention to the Court's instructions for processing and production of records, batching motions, and filing exhibits. Failure to adhere to this Order may, when appropriate, result the imposition of sanctions and/or sua sponte denial of non-conforming motions. Signed by Judge Ketanji Brown Jackson on 9/21/2018. (lckbj1) (Entered: 09/21/2018)
09/21/2018		MINUTE ORDER. In light of the representations in Defendant's <u>22</u> Status Report, it is hereby ORDERED that Defendants obligation to file status reports every 60 days is VACATED, and that the parties shall file a joint status report on or before 10/31/2018, which shall include a proposed schedule for further proceedings if litigation is going to be necessary. Signed by Judge Ketanji Brown Jackson on 9/21/2018. (lckbj1) (Entered: 09/21/2018)
10/31/2018	<u>24</u>	Joint STATUS REPORT by FOOD AND DRUG ADMINISTRATION. (Field, Brian) (Entered: 10/31/2018)
11/08/2018		MINUTE ORDER adopting parties' proposed briefing schedule. It is hereby ORDERED that the following deadlines are set in this matter: Plaintiff's motion for in camera review shall be served on or before 11/20/2019; Defendant's opposition and cross-motion for summary judgment shall be served on or before 1/21/2019; Plaintiff's reply and cross-motion opposition shall be served on or before 2/20/2019; Defendant's cross-motion reply shall be served on or before 3/22/2019; briefs shall be filed as a batch within three (3) business days of the service of the last reply brief authorized by this Minute Order, but in any event no later than the Final Filing Deadline of 5/3/2019. Signed by Judge Ketanji Brown Jackson on 11/8/2018. (lckbj1). (Entered: 11/08/2018)
11/20/2018	<u>25</u>	STRICKEN PURSUANT TO <u>23</u> SUPERSEDING GENERAL ORDER AND GUIDELINES FOR FOIA CASES.....MOTION in Camera Review by FREEDOM WATCH, INC. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Text of Proposed Order)(Klayman, Larry) Modified on 2/12/2019 (jf). (Entered: 11/20/2018)
01/18/2019	<u>26</u>	MOTION to Stay , MOTION for Extension of Time to <i>All Deadlines</i> by FOOD AND DRUG ADMINISTRATION (Attachments: # <u>1</u> Text of Proposed Order)(Pfaffenroth, Peter) (Entered: 01/18/2019)

01/18/2019		MINUTE ORDER granting <u>26</u> Motion to Stay in light of lapse of appropriations. For good cause shown, it is hereby ORDERED that this case is STAYED. Counsel for Defendant shall notify the Court as soon as Congress has appropriated funds; at that point, the Court will enter an order resetting the applicable deadlines, which will be extended day-for-day with the duration of the lapse in appropriations. Signed by Judge Ketanji Brown Jackson on 1/18/2019. (lckbj1) (Entered: 01/18/2019)
01/28/2019	<u>27</u>	NOTICE of Restored Government Funding by FOOD AND DRUG ADMINISTRATION (Field, Brian) (Entered: 01/28/2019)
02/11/2019		MINUTE ORDER. Defendant has provided notice that an appropriations act providing funding to the Department of Justice for a three-week period of time was enacted on 1/25/2019. (ECF No. <u>27</u> .) Accordingly, it is hereby ORDERED that the stay in this matter is lifted, and that the briefing schedule in this matter is amended as follows: Defendant's opposition and cross-motion for summary judgment shall be served on or before 2/25/2019; Plaintiff's reply and cross-motion opposition shall be served on or before 3/27/2019; Defendant's cross-motion reply shall be served on or before 4/26/2019; briefs shall be filed as a batch within three (3) business days of the service of the last reply brief authorized by this Minute Order, but in any event no later than the Final Filing Deadline of 6/7/2019. Signed by Judge Ketanji Brown Jackson on 2/11/2019. (lckbj1) (Entered: 02/11/2019)
02/25/2019	<u>28</u>	NOTICE of Compliance Regarding Defendant's Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion for In Camera Review by FOOD AND DRUG ADMINISTRATION (Field, Brian) (Entered: 02/25/2019)
03/25/2019	<u>29</u>	Consent MOTION for Extension of Time to Respond to Defendant's Motion for Summary Judgment and Reply to Defendant's Opposition to Plaintiff's Motion for In Camera Review by FREEDOM WATCH, INC. (Attachments: # <u>1</u> Text of Proposed Order)(Klayman, Larry) (Entered: 03/25/2019)
04/05/2019	<u>30</u>	NOTICE of Compliance by FREEDOM WATCH, INC. (Attachments: # <u>1</u> Exhibit Plaintiff's Statement of Material Facts in Dispute, # <u>2</u> Exhibit Plaintiff's Opposition to Defendant's Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion for In Camera Review)(Klayman, Larry) (Entered: 04/05/2019)
04/11/2019		MINUTE ORDER finding as moot <u>29</u> Motion for Extension of Time to Respond to Defendant's Motion for Summary Judgment and Reply to Defendant's Opposition to Plaintiff's Motion for In Camera Review. Under this Court's General Order and Guidelines, "[t]he parties are permitted to modify the schedule for serving their filings on each other by consent, and without any Order from this Court." (ECF No. <u>23</u> .) Signed by Judge Ketanji Brown Jackson on 4/11/2019. (lckbj1) (Entered: 04/11/2019)
05/10/2019	<u>31</u>	NOTICE of Compliance by FOOD AND DRUG ADMINISTRATION (Field, Brian) (Entered: 05/10/2019)